

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **SCOTT A. WASSERMAN, M.D.**

4 Holder of License No. 23328
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Board Case No. MD-04-0739A

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

(Letter of Reprimand)

7 The Arizona Medical Board ("Board") considered this matter at its public meeting
8 on October 7, 2005. Scott A. Wasserman, M.D., ("Respondent") appeared before the
9 Board with legal counsel Calvin Raup for a formal interview pursuant to the authority
10 vested in the Board by A.R.S. § 32-1451(H). The Board voted to issue the following
11 findings of fact, conclusions of law and order after due consideration of the facts and law
12 applicable to this matter.
13

14 **FINDINGS OF FACT**

15 1. The Board is the duly constituted authority for the regulation and control of
16 the practice of allopathic medicine in the State of Arizona.

17 2. Respondent is the holder of License No. 23328 for the practice of allopathic
18 medicine in the State of Arizona.

19 3. The Board initiated case number MD-04-0739A after receiving a complaint
20 alleging Respondent was employing an unlicensed doctor of medicine. The complaint
21 alleged Respondent employed a woman who was identified as a doctor in an
22 advertisement that appeared in the June 2004 edition of the "101 North" magazine. The
23 advertisement portrayed the female employee as a doctor from Venezuela who offered a
24 variety of treatment choices to correct skin damage caused by age, sun exposure and
25 lifestyle. The advertisement indicated the female employee earned her medical degree
from the Universidad Central de Venezuela. The female employee was not licensed to

1 practice medicine by the Board nor was she licensed to practice cosmetology by the
2 Arizona Board of Cosmetology.

3 4. Respondent was asked to define "mesotherapy." Respondent testified the
4 word derived from a French treatment and is a recognized specialty in France that has
5 been around for over fifty years. Respondent indicated mesotherapy is practiced in
6 France largely as a medical treatment for medical conditions and it revolves around using
7 very small needles to inject medications and various substances into the skin.
8 Respondent indicated mesotherapy has become popular in the United States for its
9 potential aesthetic and cosmetic applications where, depending on what is being used, all
10 substances are more or less Federal Drug Administration approved substances being
11 used off-label to improve the appearance of cellulite, dissolve small pockets of fat, and
12 inject vitamins into the skin to improve its condition.

13 5. The Board noted the material in *101 North* was an article not an
14 advertisement, but Respondent's website was an advertisement. Respondent was asked
15 if the female employee was listed with "M.D." after her name. Respondent testified there
16 was an "M.D." after her name and he believed she deserved to use the designation, but
17 in at least two locations on the website it succinctly stated that she was practicing in his
18 office in the capacity of an aesthetician. Respondent was asked how many employees
19 he had at his clinic. Respondent testified he had four full-time employees and he has just
20 taken on another physician – a licensed physician. Respondent indicated one of the
21 employees is a licensed aesthetician.

22 6. Respondent testified the female employee in question did attend medical
23 school and was a licensed physician in Venezuela. Respondent testified he met her at a
24 conference and maintained correspondence with her while she was living in Florida
25 where she was a licensed aesthetician. Respondent testified he made arrangements for

1 her to move to Arizona knowing full well she could not be a licensed medical doctor in the
2 United States. Respondent testified he had to plead ignorance to not knowing the female
3 employee could not use "M.D." Respondent testified that everything else he did in the
4 course of representing her to patients was always with the preface that she was not
5 practicing as a medical doctor, but as an aesthetician. Respondent was asked how this
6 female employee was addressed in his office. Respondent testified she was addressed
7 by her first name and she had complained to him that she should be addressed as a
8 physician. Respondent noted he and the patients also called her by her first name.
9 Respondent testified that during his interview with Board investigative Staff he was
10 extremely honest and stated there were definitely times she was referred to as "Dr.", but
11 never in a context in which the patient had not been first told that she was not in Arizona
12 as a medical doctor.

13 7. Respondent testified there was never a point where there was an intention
14 to let anyone that came into his office see the female employee as a licensed medical
15 doctor. Respondent testified the female employee never saw patients independently,
16 never made diagnostic treatments, and any treatment she carried out was a treatment he
17 recommended for the patient.

18 8. Respondent was asked if it was his testimony that a person doing an
19 aesthetician's work does not need to be a licensed aesthetician. Respondent testified it
20 was not and he had a copy of the female employee's Florida aesthetician license and she
21 told him she had filed the paperwork for her Arizona aesthetician license. Respondent
22 testified he took full responsibility for putting the female employee out as a licensed
23 aesthetician before he had her Arizona license in hand, but he knew she had been
24 licensed in Florida and the issuance of her Arizona license was imminent.
25

9. The Board noted the female employee had "M.D." on her business card and the cards had Respondent's office address. Respondent was asked if there were any other marketing or advertising tools he used in which the female employee appeared as a M.D. Respondent testified he wanted to make it clear that the article in *101 North* that is referred to as an advertisement was in fact an article written independently by the magazine. Respondent also noted the article did say it was written in response to a biography/press release that the magazine received from his office. Respondent testified the press release did not mention that she was coming to his office as a physician and it just said she was coming as a new staff member and he was very clear not to overstep those bounds. Respondent was asked whether the article and the press release indicated the female employee was joining his office and had "M.D." after her name. Respondent stated they did. Respondent noted that the female employee returned to Florida shortly after the complaint was filed with the Board.

10. Respondent acknowledged he had the duty to be in control of his office and what occurs in it. Respondent testified his original training and residency was in internal medicine and the majority of his career until the point he opened his current office in 2000 was as an emergency medicine physician employed by a company. Respondent indicated running his own practice has been a learning curve for him as to what he needs to know. Respondent stated he takes his responsibilities as a physician and to the Board very seriously.

CONCLUSIONS OF LAW

1. The Arizona Medical Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The Board has received substantial evidence supporting the Findings of Fact described above and said findings constitute unprofessional conduct or other grounds for the Board to take disciplinary action.

3. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-1401(27)(a) ("[v]iolating any federal or state laws, rules or regulations applicable to the practice of medicine"); specifically A.R.S. § 32-574(A)(5) ("[a] person shall not permit an employee or another person under the person's supervision or control to perform cosmetology, aesthetics or nail technology without a license issued pursuant to this chapter"); and A.R.S. § 32-1401(27)(c) ("[f]alse, fraudulent, deceptive or misleading advertising by a doctor of medicine or the doctor's staff, employer, or representative").

ORDER

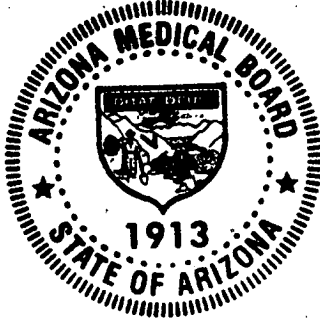
Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS
HEREBY ORDERED that Respondent is issued a Letter of Reprimand for falsely
advertising an employee as a licensed physician and/or aesthetician.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. The petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-102. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

1 Respondent is further notified that the filing of a motion for rehearing or review is
2 required to preserve any rights of appeal to the Superior Court.

3 DATED this 12th day of December, 2005.



THE ARIZONA MEDICAL BOARD

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By *Timothy C. Miller*
TIMOTHY C. MILLER, J.D.
Executive Director

ORIGINAL of the foregoing filed this
12th day of December, 2005 with:

Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

Executed copy of the foregoing
mailed by U.S. Certified Mail this
12th day of December, 2005, to:

Calvin Raup
Shughart, Thomson & Kilroy, P.C.
3636 North Central Avenue – Suite 1200
Phoenix, Arizona 85012-0001

Scott A. Wasserman, M.D.
Address of Record

Jim McGinnis